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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of MEGHAN and WILLIAM L. COOKE III.	B257791
MEGHAN COOKE, Appellant, v. WILLIAM L. COOKE III, Respondent.	(Los Angeles County Super. Ct. No. KD085751)

APPEAL from an order of the Superior Court of Los Angeles County, H. Don Christian, Temporary Judge. Affirmed.

Law Offices of Pittullo, Barker & Associates and Jonathon A. Zitney for Appellant.

Kendall & Gkikas and Brian D. Mitchell for Respondent.

INTRODUCTION

In this dissolution of marriage action, Meghan Cooke moved for entry of a stipulation for judgment that she and her husband William Cooke had signed.[1] In the stipulation for judgment the parties asked the court to award joint legal custody of the children, give sole physical custody of the children to Meghan, reserve the issues of child support and visitation, terminate the court's jurisdiction over spousal support, divide the community property and debts as provided in the stipulation, and require each party to bear his or her attorneys' fees.

After he signed the stipulation, William filed a motion to set it aside and prevent the court from entering it. After a trial on this bifurcated issue, the court granted William's motion to set aside the stipulation and denied Meghan's motion to enter judgment on the stipulation. The trial court found that Meghan had obtained William's signature on the stipulation through duress and undue influence. We conclude that the trial court properly applied the presumption of undue influence to this interspousal transaction and found Meghan had failed to rebut the presumption, and that Meghan has not met her burden on appeal of showing that the evidence compels a contrary result. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

William and Meghan were married in October 1999 and have three minor children. They separated in September 2012. On October 19, 2012 Meghan filed a petition for dissolution of marriage. Less than two weeks later, the parties signed an agreement entitled "Stipulation for Judgment." This appeal concerns the circumstances surrounding the execution, and the enforceability, of this agreement.

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[1] As is customary in family law cases, we refer to the parties by their first names for convenience and clarity. (See *In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn. 1.)

A. *Meghan and William Sign a Stipulation for Judgment*

On October 30, 2012 Meghan and William went to the office of Meghan's attorney to sign an agreement. William, who did not have an attorney, drove himself to the office, where he met Meghan and, to his surprise, Meghan's father. William and Meghan read the stipulation for judgment page by page in the lobby, and made two minor changes to the document regarding their daughter's age and some credit card debt. William was crying and felt pressured to sign the agreement. Without discussing the document with anyone other than Meghan, William signed it in the presence of a notary public. As he was leaving, he received several documents, including Meghan's preliminary declaration of disclosure form. William then "went to [his] car [and] sat there for, at least, 20 minutes crying."

The stipulation for judgment provided that the parties would have joint legal custody of the children, Meghan would have sole physical custody, and William would have reasonable visitation as agreed upon by the parties. The stipulation also waived both parties' right to spousal support by providing that the court would terminate jurisdiction over the issue, provided that the court would reserve the issue of child support, and stated that each side would be responsible for his or her attorneys' fees. The property division section of the stipulation stated that the court would award Meghan the marital home in Covina, California, subject to any encumbrances, while William would receive vacant land located in Johnson Valley, California. In the stipulation the parties asked the court to award William his truck, trailer, and car collection, award Meghan her van, and divide various retirement accounts. The stipulation for judgment contained the following provisions: "The parties stipulate and the Court finds that the division of property set forth herein is a fair, equitable and even division of the community estate. The parties stipulate and the Court finds that although this may not be a completely equal division of the community estate, it is fair and equitable." The stipulation also contained a statement, in the section relating to custody, that the parties "enter[ed] into this stipulated judgment freely, without threat, coercion or duress."

Approximately one month after the parties had signed the stipulation for judgment, but before they asked the court to enter it, William changed his mind. On November 27, 2012 William filed a response to the petition for dissolution, listing the marital home, retirement benefits, and other unknown assets as community property. On January 8, 2013 William filed a request for an order requiring Meghan to pay him monthly spousal support of $498, and requiring him to pay monthly child support of $51. William also requested modification of the existing custody and visitation arrangement.

B. *Meghan Asks the Court To Enter the Stipulation for Judgment and William Asks the Court To Set It Aside*

On February 15, 2013 Meghan filed a "Request to enter agreement/judgment" pursuant to Code of Civil Procedure section 664.6 seeking to enforce the stipulation for judgment and enter judgment pursuant to its terms. Meghan also asked for an order granting her request "to voluntarily waive her right to receive[] both preliminary and final declarations of disclosure" under Family Code section 2107, which Meghan claimed William had not provided her, so that the court could enter the stipulation for judgment. She argued that William had not served and filed his preliminary declaration of disclosure, which was preventing the court from entering judgment, and that William was "refusing to cooperate and is purposefully frustrating this process."[2]

On April 11, 2013 William filed a request for an order to set aside the stipulation for judgment. William claimed his "mental state and logic at [the] time of signing the judgment was not clear." He stated, "Meghan and her dad sat in the waiting room near me. I was handed documents that I had never seen before and told that I was to sign in various places. . . . I tried to focus and read the papers. However, I continually broke down in tears, sobbing. . . . The notary came out and I started signing papers. I was

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[2] William eventually filed his declaration regarding service of his preliminary declaration of disclosure and income and expense declaration on July 17, 2013.

crying while the notary was there too." The court bifurcated the requests for entry of and to set aside the stipulation for judgment, and set the matter for trial.

C. *The Trial Court Conducts a Bifurcated Trial on Whether To Enter Judgment Pursuant to the Stipulation*

At the trial on whether to enter judgment pursuant to the stipulation, William testified that he did not consult with an attorney before signing the agreement. Prior to the meeting, William had tried unsuccessfully to communicate with Meghan's attorney, Carlos Cabrera. William sent emails to Mr. Cabrera, who responded that he needed "to consult with his client" and "would get back" to William. When Meghan learned that William had contacted her attorney, however, she called William, yelled at him, instructed William not to contact her attorney, and stated that if William wanted "to find out about how things are going" he should speak with her. Both sides appear to have been concerned about the costs of litigation. William sent Meghan an email six days before signing the stipulation for judgment stating, "It might be good if you got the appointment asap to change the papers for us to what we wanted them to say. By the end of the week would be great. . . . I know we don't want to get caught up in a more expensive legal mess to change it from what we didn't want."

William testified that he drove to Mr. Cabrera's office, where he and Meghan read the five-page document page by page, made two corrections (one of which was to transfer a credit card debt from Meghan to William), and signed the document. William believed "Mr. Cabrera was going to sit down and go over it, line by line, anything that I was signing, what it meant, what the legal ramifications were to me, what the other options would have been . . . basically, teaching me what the law was," but William never saw Mr. Cabrera. William testified, "I was sobbing, my eyes were full of tears, I wear contacts and they were totally blurred." William also testified that no one, other than Meghan, explained the document to him. The notary who witnessed William execute the stipulation for judgment testified that William's emotions were "very unusual" and he was "very visibly upset and crying" and "heav[ily] sobbing," but she did

not consider refusing to notarize his signature on the document "because of his emotions."

William testified he had some college education in auto body repair and had worked for his father-in-law's auto parts distributing business. At the time he signed the agreement he was unemployed and had been a stay-at-home child care provider for several years. He stated he did not have any knowledge about spousal support and believed men did not receive it, did not know Meghan was earning $4,600 per month, and did not know the values of their retirement accounts. He testified that he signed the agreement because he was fearful he would not be able to see his children if he did not sign it, and because "that was what [Meghan] said needed to happen for me to be able to have visitation with my daughter, for me to make it easy for my kids, because she told me this is the easiest way for the kids."

Meghan testified that, when William came to the office to sign the stipulation, they made two corrections to the document, one to change the age of their daughter and one to list one of the credit cards as William's debt. According to Meghan, William asked for these changes because "he wanted to take care of his debts." She and William looked at the revised agreement "to make sure the changes were made." Meghan testified she and William had previously discussed settlement during a prior separation and again in more detail prior to signing the stipulation for judgment, and she stated, "We wanted to make this as simple as possible for our children." Meghan acknowledged that William had hoped the two of them would reconcile but she denied suggesting to him that there was a possibility of reconciliation if he signed the stipulation. Meghan also testified that she, not William, was the primary caregiver for the children, and that she prepared 99 percent of the meals for the family.

Two real estate appraisers testified regarding the value of the marital home. William's appraiser testified that as of August 1, 2013 the value of the family residence was $630,000. William's appraiser acknowledged that she based her opinion of the value of the property on comparables around August 1, 2013, that she drove by the property but did not inspect the interior of the property, and that she did not determine the value of the

property as of October 30, 2012, the date William and Meghan signed the stipulation. Meghan's appraiser testified that the value of the property as of October 30, 2012 was $500,000. He testified that he inspected the interior and exterior of the property and prepared a "retrospective appraisal" report looking at historical data and assuming the condition of the home in 2013 was similar to that on October 30, 2012. Both appraisers agreed the value of the property would have increased since October 30, 2012.

D. *The Trial Court Vacates the Stipulation and Denies Entry of Judgment*

On June 4, 2014 the court denied Meghan's motion to enter judgment on the stipulation and granted William's motion to set it aside. The court found that Meghan breached her fiduciary duties to William, Meghan exercised undue influence in obtaining the stipulation, and her conduct "went to the level of improper negotiations, undue influence and even actual duress at the signing of the 'proposed judgment.'"

In its statement of decision, the court found William "obviously went to the offices of [Meghan]'s attorney. [He] was not represented by counsel. He had not been presented with a draft of the 'Stipulation for Judgment,' nor the Preliminary Declaration of Disclosure until he arrived. . . . It was clear by independent witnesses that [William] was distraught and crying at various times. There was no meeting with the attorney or explanation . . . of the legal consequences of the changes that were made to the document before it was signed that same day. . . . The Stipulation for Judgment is of interest due to its brevity. Although one of the underlying reasons for proceeding was custody, visitation and support, those issues are disposed of without explanation or detail. Further spousal support is addressed as follows: 'The Court shall terminate jurisdiction over the issue of spousal support.' Support waivers and issues are significantly affected by the continuing Family Code Section 721(b) intra-spousal fiduciary obligations for 'immediate, full and accurate disclosure of material facts and information' regarding each party's income and expenses. Applying contract defenses of fraud, duress and undue influence would lead to a set-aside where there is no evidence of 'waiver knowingly and voluntarily made.'"

"Similarly, contracts are voidable on the grounds of 'menace' or 'duress' to the extent that the cumulative effect on a party's mental state vitiated consent. [Citations.] Here, [William] was ignorant of his legal rights and he relied upon [Meghan] and the documents created by the attorney's office which would lead to the presumption of undue influence in connection with the 'agreement.' [Citations.] [Meghan] did not rebut the presumption of Family Code section 721 of a transaction advantage. Additionally, following [citation], it should be recommended that each party retain independent counsel and seek independent legal [advice] before finalizing and executing any settlement agreement."

The court ruled that "the presumption of undue influence is applicable in this matter," and that the duty of disclosure between spouses "is applicable to private out-of-court settlements especially in a pending dissolution. This was not a pre-filing agreement between the parties. This was a pending dissolution. The parties are under an ongoing fiduciary duty. That means fair dealing, and good faith. The court finds that [Meghan] did breach her fiduciary duties to [William]." The court also stated, "Calling the 'proposed judgment' a Stipulation for Judgment or a Judgment is not sufficient to cause this court to ignore the presumptions of Family Code [section] 721 as they apply to parties entering [into] agreements or transfers, because that's a substantial waiver of rights, especially, a waiver of spousal support." The court added, "In this particular case, the issue of whether a presumption of undue influence was controlling and/or there was undue influence really is moot. This court finds actual undue influence on the part of [Meghan] in obtaining the 'proposed judgment.' However, Family Code [section] 721 is applicable to every pending dissolution. Once there is a showing of an unfair advantage as is more particularly discussed in the cases as to presumption of undue influence, the advantaged spouse would have to make a showing of fact, and would have to rebut that presumption of undue influence as to the unfair agreement whether it is after a case is filed or after the parties are separated so long as it is before Judgment is entered."

E. *Meghan Appeals*

On July 21, 2014 Meghan filed a notice of appeal. On July 28, 2014 Meghan filed an ex parte application for, among other things, an order to stay proceedings pending appeal and for the court "to confirm ruling on bifurcated issue is certified for appeal." The trial court certified "that there is probable cause for immediate appellate review of the order . . . on the bifurcated issue to enter Judgment or set aside [the parties'] agreement." The court stayed the matter pending appeal and vacated trial dates on the remaining issues.

DISCUSSION

A. *We Excuse Meghan's Failure To Comply with California Rules of Court, Rule 5.392*

Although Meghan requested and obtained from the trial court on July 28, 2014 a certificate of probable cause for immediate appeal of an order on a bifurcated issue under California Rules of Court, rule 5.392(b), she did not make a motion in this court, within the required 15 days or otherwise, to appeal the trial court's decision on the bifurcated issue, as required by rule 5.392(d). Nor did this court ever grant a motion to appeal under rule 5.392(f). In addition, the trial court's order issuing the certificate of probable cause does not comply with rule 5.392(c), which provides that a "certificate of probable cause must state . . . the reason immediate appellate review is desirable." Therefore, we requested supplemental briefing on whether we should dismiss the appeal for Meghan's failure to comply with California Rules of Court, rule 5.392. (See Fam. Code, § 2025; *In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1434.)

The parties do not dispute that Meghan failed to comply with rule 5.392. Nevertheless, because of the importance of the issue and its potential to resolve the entire family law proceeding, and because both parties urge us to hear the appeal, we will treat the belated request in Meghan's supplemental brief as a motion under rule 5.392(d), grant that motion, and consider the appeal.

B. *The Presumption of Undue Influence Applies to the Stipulation for Judgment*

Family Code section 721, subdivision (a), provides that spouses have the right to enter into transactions with each other. Family Code section 721, subdivision (b), however, provides that in such transactions, "'a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.' In view of this fiduciary relationship, '[w]hen an interspousal transaction advantages one spouse, "[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence."' [Citation.] 'Generally, a fiduciary obtains an advantage if his position is improved, he obtains a favorable opportunity, or he otherwise gains, benefits, or profits.' [Citation.] The spouse advantaged by the transaction has the burden of dispelling the presumption of undue influence. [Citation.] The presumption can be dispelled by evidence that the disadvantaged spouse entered into the transaction 'freely and voluntarily . . . with a full knowledge of all the facts and with a complete understanding of the effect of the [transaction].'" (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 84 (*Kieturakis*).) "Thus, '"[i]f one spouse secures an advantage from the transaction, a statutory presumption arises under [Family Code] section 721 that the advantaged spouse exercised undue influence and the transaction will be set aside."'" (*Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1353; see *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 628-629 (*Mathews*); *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 293.)

Meghan's primary argument is that the trial court erred in applying the presumption of undue influence in interspousal transactions because the presumption does not apply to the stipulation for judgment. Citing *Kieturakis*, *supra*, 138 Cal.App.4th 56 and *In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881 (*Woolsey*), Meghan argues that, because the presumption of undue influence does not apply to mediated settlement agreements, the presumption should also not apply to unmediated, negotiated

settlement agreements.[3] Meghan's conclusion, however, does not follow from her premise.

The courts in *Kieturakis* and *Woolsey* held that the presumption of undue influence does not apply to mediated settlement agreements. In *Kieturakis* the court stated that "the presumption of undue influence in marital transactions must yield to the policies favoring mediation and finality of judgments." (*Kieturakis*, *supra*, 138 Cal.App.4th at p. 61.) The court in *Woolsey* stated, "'"Divorce mediators generally work to balance the negotiating power between the parties. This tends to produce agreements that are more fair and voluntary, rather than coerced."' [Citation.] . . . [¶] 'Even more importantly, to apply the presumption of undue influence to mediated marital settlements would severely undermine the practice of mediating such agreements. Application of the presumption would turn the shield of mediation confidentiality into a sword by which any unequal agreement could be invalidated.'" (*Woolsey*, *supra*, 220 Cal.App.4th at p. 902.)

The stipulation for judgment was not the product of a mediation, and Meghan does not cite any authority for her contention that the rule of *Kieturakis* and *Woolsey* should apply outside the context of formal mediation. She asserts only that "there is no reason to treat differently or otherwise distinguish formal mediated agreements with an actual mediator, as opposed to agreements mediated privately between the parties." She contends that "[s]hould the application of undue influence be applied, the public policies favoring mediation, negotiation, and settlement would be dealt a significant blow, as any unequal agreement could be set aside based upon the presumption and there would be a tremendous disincentive for parties to settle or mediate."

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3 We independently review Meghan's legal argument that the statutory presumption under Family Code section 721, subdivision (b), does not apply to unmediated settlement agreements. (*In re Marriage of E.U. and J.E.* (2012) 212 Cal.App.4th 1377, 1389; *Dowling v. Farmers Ins. Exchange* (2012) 208 Cal.App.4th 685, 694 ["[w]e . . . independently review legal questions regarding the construction and application of a statute"].)

Disincentive to settle, perhaps; disincentive to mediate, no. In *Kieturakis* the court held that "the presumption of undue influence cannot properly be applied to marital settlement agreements reached through mediation" because family law mediators not only level any imbalance of bargaining strength between the parties, they "consider it their duty to attempt to determine whether the parties are 'acting under their own free will' in the mediation." (*Kieturakis, supra,* 138 Cal.App.4th at p. 85; accord, *Woolsey, supra,* 220 Cal.App.4th at p. 902.) Thus, according to the court, "while mediation is no guarantee against the exercise of undue influence, it should help to minimize unfairness in the process by which a marital settlement agreement is reached." (*Kieturakis, supra*, at p. 85.) Moreover, the court in *Kieturakis* emphasized that "to apply the presumption of undue influence to mediated marital settlements would severely undermine the practice of mediating such agreements. Application of the presumption would turn the shield of mediation confidentiality into a sword by which any unequal agreement could be invalidated." (*Ibid.*) "Thus, in the case of a mediated marital settlement agreement to which the presumption of undue influence attached, the disadvantaged party could claim, for example, to have acted under duress, refuse to waive the privilege, and thereby prevent the other party from introducing the evidence required to carry the burden of proving that no duress occurred." (*Id.* at p. 86.) Finally, the court stated that if the presumption of undue influence applied to mediated settlement agreements, "the effectiveness of mediation as a method of settling marital property disputes would be greatly impaired. Many mediated settlements might be jeopardized because relatively few of them, upon close scrutiny, would likely be found to have been perfectly equal." (*Ibid.*)

Therefore, contrary to Meghan's assertion, it is fundamental to the holdings of *Kieturakis* and *Woolsey* the fact that mediated marital settlements involve mediators and implicate the mediation privilege. All of the legal, policy, and evidentiary reasons for allowing the "presumption of undue influence [to] yield when a marital settlement agreement is achieved through mediation" (*Kieturakis, supra,* 138 Cal.App.4th at p. 87) are absent when spouses negotiate directly and enter into an interspousal transaction

without a mediator involved in the negotiations. There is no mediator to guard against undue influence, and there is no mediation privilege to preclude the advantaged party from introducing evidence of the parties' negotiations to rebut the presumption of undue influence. Indeed, the circumstances of this case suggest the stipulation for judgment was nothing like a mediation conducted by a neutral third-party facilitator. The stipulation for judgment was the product of a rushed, emotional, and unmonitored meeting, where William had no time for reflection, no one on his side, and no one working """to balance the negotiating power between the parties""" to help produce an agreement that was """fair and voluntary rather than coerced.""" (*Woolsey*, *supra*, 220 Cal.App.4th at p. 902.)

Meghan argues that the rule should be the same for both mediated and unmediated marital settlement agreements because "the party purporting to set aside the agreement would also be able to use the benefit of Evidence Code [sections 1152 and 1154] [to preclude admissibility of settlement negotiations] (in much the same way the mediation privilege was used in [*Kieturakis*]) to prevent the party attempting to uphold the agreement from introducing evidence to rebut the presumption." Not so. Evidence Code section 1152 "prohibits evidence of settlement discussions and offers of compromise to prove a defendant's liability," while Evidence Code section 1154 "precludes evidence of an injured party's offer to discount a claim to prove the claim's invalidity." (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1475, fn. 2.) Introducing evidence to rebut the presumption of undue influence in the procurement of an unfair marital agreement does not prove either spouse's liability or the invalidity of either spouse's claims. Such evidence shows only that the parties did not reach a binding contract, and that both spouses still have the right to pursue their claims and prove the other spouse's liability. (See *Lofton v. Wells Fargo Home Mortgage* (2014) 230 Cal.App.4th 1050, 1069 ["'a settlement document may be admissible for a purpose other than proving liability'"]; *Mangano v. Verity, Inc.* (2009) 179 Cal.App.4th 217, 223 [exclusion of proposed settlement agreement "did not preclude [the plaintiff] from utilizing this evidence for some other purpose"]; *Volkswagen of America, Inc. v. Superior Court*

(2006) 139 Cal.App.4th 1481, 1491 ["Evidence Code sections 1152 and 1154 are not absolute bars to admissibility, since a settlement document may be admissible for a purpose other than proving liability"]; *Moreno v. Sayre* (1984) 162 Cal.App.3d 116, 126 ["[w]hile evidence of a settlement agreement is inadmissible to prove liability," it "is admissible to show bias or prejudice of an adverse party"].)

Finally, noting that the stipulation for judgment includes language stating that the "parties enter into this stipulated judgment freely, without threat, coercion or duress," Meghan argues that "the presumption of undue influence does not apply when an attestation clause . . . confirms the parties' understanding and acknowledgment of an unequal division of the community estate." As the court in *Woolsey* noted, however, whether a marital settlement agreement contains a "declaration that it was free from undue influence" is "a distinction without a difference." (*Woolsey*, *supra*, 220 Cal.App.4th at p. 902.) The presumption of undue influence under Family Code section 721, subdivision (b), may apply to an unmediated marital settlement agreement, regardless of whether the agreement, presumptively obtained by undue influence, states neither party obtained the agreement by undue influence. The presence of such (or other) language in the agreement may be evidence that tends to rebut the presumption (see *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 739), but such language does not preclude the application of the presumption where it applies. Otherwise, it would be too easy to immunize interspousal transactions from the statutory presumption by including such language in the agreement.[4]

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[4] Meghan also argues that "the party attempting to set aside the [marital] settlement agreement or stipulated judgment should bear the burden of proof . . . of one of the factors listed in Family Code [section] 2122 (which sets forth the specific grounds for which a set aside may be brought, of which undue influence is not explicitly included)." Family Code section 2122, which lists the grounds for setting aside a judgment, applies to "a motion to set aside a judgment, or any part or parts thereof." (Fam. Code, § 2122; see *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1143 [Family Code section 2122 "authorizes an action or motion to set aside a dissolution judgment on specified grounds"].) William moved to set aside a stipulation for judgment the court never entered, not a judgment. There is no judgment to set aside.

C. *Substantial Evidence Supports the Trial Court's Finding That the Presumption of Undue Influence Applied*

Meghan argues that the evidence did not support the trial court's finding that the presumption of undue influence under Family Code section 721, subdivision (b), applied to the stipulation for judgment. We review for substantial evidence the trial court's finding that William met his burden of proving by a preponderance of the evidence the foundational facts for application of the presumption. (See *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653 ["the trier of fact in this situation is required to determine only whether the proponent of the presumption has established, by a preponderance of the evidence, the existence of the foundational facts"].)

As noted, the statutory presumption of Family Code section 721 applies to interspousal transactions where one spouse has obtained an unfair advantage over the other. (*In re Marriage of Haines*, *supra*, 33 Cal.App.4th at p. 301.) "Generally, a spouse obtains an unfair advantage if that spouse's position is improved, he or she obtains a favorable opportunity, or otherwise gains, benefits, or profits." (*Mathews*, *supra*, 133 Cal.App.4th at p. 629; see *Lintz v. Lintz*, *supra*, 222 Cal.App.4th at p. 1353 ["[a]n advantage results to one spouse when that spouse gains or when the other spouse is hurt by the transaction"].)

Counsel for William argued that the evidence supported application of the presumption of undue influence under Family Code section 721, subdivision (b). Counsel argued that "the waiver of spousal support in [a] marriage with one person who has no resources and another person who has [a] very substantial salary in a long-term marriage is a very serious waiver," and that the presumption of undue influence applied because "the division of assets in this case is so extraordinar[il]y unfair and unequal." The trial court agreed, and substantial evidence supports the trial court's finding. The stipulation for judgment gave Meghan an unfair advantage because, had the court entered judgment on the stipulation, Meghan would have obtained a 100 percent interest in the marital home, with a value of at least $500,000, while William would have received vacant land in the Mojave Desert with a net value of approximately $1,000 and a car

collection valued at between $20,000 (by William) and $57,000 (by Meghan). The stipulation also waived William's right to spousal support, even though in 2012 Meghan was a vice president of administration with an annual salary of approximately $55,000, while William earned approximately $10,000, almost all of it working for Meghan's father and paid in checks Meghan's father made payable to Meghan.[5] Significantly, Meghan does not dispute that the terms of the stipulation for judgment gave her an advantage.

Meghan argues that the trial court "did not detail or make any findings whatsoever as to what specific VALID transactional advantage occurred which would trigger the presumption of undue influence . . . ." As Meghan concedes, however, the court cited William's "waiver of spousal support in a long-term marriage" as a basis for applying the presumption. The waiver of his right to spousal support by William, who stayed at home and took care of the children while Meghan earned a salary for the community, is an indication that Meghan gained an unfair advantage in the transaction. Moreover, in determining whether substantial evidence supports the court's findings, we consider all of the evidence in the trial record. (See *In re Marriage of Howell* (2011) 195 Cal.App.4th 1062, 1078 [under "the substantial evidence standard of review," "we determine from the entire record whether there is substantial evidence contradicted or uncontradicted, which supports the trial court's factual determinations"]; *In re Marriage of Burkle, supra,* 139 Cal.App.4th at p. 734 ["[w]hether an interspousal transaction gives one spouse an unfair advantage is a question for the trier of fact"].)

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[5] At trial, Meghan did not attempt to justify the inequality of the stipulation, other than to give her opinion that the stipulation was fair because they agreed to it: "We came to an agreement, so I feel that it's fair and equitable." When asked if she believed it was fair that she received all of the equity in the marital home, even though William's grandfather had sold them the house at a discount of several hundred thousand dollars, Meghan stated, "That was our home, and we came to an agreement."

D. *The Evidence Does Not Compel a Finding Contrary to the Court's Finding That Meghan Failed To Rebut the Presumption of Undue Influence*

As noted, "[w]hen a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse's action 'was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of' the transaction." (*In re Marriage of Burkle*, *supra*, 139 Cal.App.4th at pp. 738-739.) The trial court found Meghan failed to rebut the presumption.

We review the trial court's ruling that Meghan did not rebut that presumption to determine whether the evidence compels a finding in Meghan's favor as a matter of law. "'In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. . . . [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) "uncontradicted and unimpeached" and (2) "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding."'" (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; accord, *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769; *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395.) Indeed, "[w]here, as here, the judgment is against the party who has the burden of proof, it is almost impossible for him [or her] to prevail on appeal by arguing the evidence compels a judgment in his [or her] favor. That is because unless the trial court makes specific findings of fact in favor of the losing [party], we presume the trial court found the [losing party's] evidence lacks sufficient weight and credibility to carry the burden of proof. [Citations.] We have no power on appeal to judge the credibility of witnesses or to reweigh the evidence." (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1486.)

The evidence at trial does not compel a finding as a matter of law that William signed the stipulation for judgment "'freely and voluntarily . . . with a full knowledge of all the facts and with a complete understanding of the effect of the'" stipulation. (*Kieturakis*, *supra*, 138 Cal.App.4th at p. 84.) Meghan did not show William a copy of the agreement before he went to Mr. Cabrera's office. William testified and the notary confirmed that William was emotionally distraught. William was sobbing heavily and unable to read the stipulation when he saw it for the first time, so Meghan read the document to him. Meghan was represented by counsel and assisted by her father, William's occasional employer whom William viewed as a father to him. William represented himself, and Meghan told William he could not bring anyone to her attorney's office when he came to sign the stipulation, even though William asked if he could bring his sister. (Cf. Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2016) ¶ 9:243:2 ["[e]vidence that the spouse who secured the advantage provided the aggrieved spouse with the opportunity to obtain independent legal advice as to his or her rights in the premises of the transaction may be persuasive in overcoming the undue influence presumption"].) William did not even have a chance to discuss the agreement or any revisions with Mr. Cabrera, the attorney representing the other side of the transaction, because Mr. Cabrera never appeared at the meeting. When William asked if he could take the document home and review it, Meghan said, "No. This needs to be done today."

There was also evidence that Meghan, who controlled most of the family's finances, did not make a full disclosure of the community assets. (See *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1271 [the provisions of the Family Code "impose a sua sponte duty on the managing spouse to advise the nonmanaging spouse of the existence and value of the community property"]; cf. *Marriage of Burkle*, *supra*, 139 Cal.App.4th at p. 739.) "[T]he Family Code imposes fiduciary obligations on both parties. One obligation is to make full, accurate, and complete disclosure, including the continuing duty to update and augment information. [Citations.] It reasonably follows that a spouse who is in a superior position to obtain

records or information from which an asset can be valued and can reasonably do so must acquire and disclose such information to the other spouse." (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1348; see *In re Marriage of Georgiou & Leslie* (2013) 218 Cal.App.4th 561, 570 ["'[t]he formulation of a marital settlement agreement is not an ordinary business transaction, resulting from an arm's-length negotiation between adversaries,'" but "'is the result of negotiations between fiduciaries required to openly share information'"].) There was evidence that Meghan was in charge of the marital finances, paid the bills, kept most of the couple's money in bank accounts she controlled, and limited William's knowledge of and access to information about their bank and retirement accounts. Even more significant, she did not give William her preliminary declaration of disclosure and her income and expense declaration until after he had signed the stipulation.

Finally, there was evidence that Meghan used access to the children to coerce William to sign the stipulation. William testified that Meghan, who generally dictated the terms of the marriage such that William dared to contradict her only once, told him that if he did not sign the agreement he "would find it much more difficult to be seeing the children." William stated he signed the stipulation because Meghan said that he needed it in order to visit the children, "the only way for [him] to see the children would be to sign the divorce papers and do what she wants," and signing the stipulation "would be the only way for [him] to see the children without any problems."

Meghan, of course, contradicted some of William's testimony. She denied that she threatened to keep William from seeing the children unless he signed the stipulation. She also testified she and William had discussions at the meeting about making changes to the document, and that William had access to the family bills and bank accounts. She testified that, because William had credit problems, William had a separate bank account into which they deposited only what they needed at the time so that his creditors "wouldn't take all of our money." But her testimony was not "uncontradicted and unimpeached," nor did it leave no room for the trial court's contrary finding. Because the evidence does not compel a finding as a matter of law that Meghan rebutted the

presumption of undue influence, the trial court did not err in refusing to enter judgment on the stipulation.[6]

DISPOSITION

The order is affirmed. William is to recover his costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

GARNETT, J.*

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[6] Citing Family Code section 2125, Meghan argues that the court "could have simply set aside [the] provision" regarding spousal support for a long-term marriage and "left the remainder of the Agreement intact . . . ." Family Code section 2125 provides, "When ruling on [a] motion to set aside a judgment, the [family] court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief." Like Family Code section 2122, however, Family Code section 2125 applies only to judgments, and William did not move to set aside a judgment. (See *Rubenstein v. Rubenstein*, *supra*, 81 Cal.App.4th at p. 1140.) Moreover, Family Code section 2125 gives the court "discretion to set aside the entire judgment, if necessary, for equitable considerations." The court's statement of decision reflects that the court either did exercise, or would have exercised, discretion to set aside the entire stipulation.

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.